

## PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

Rec'd PCT/PTO 05 JUL 2005  
**PCT**

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:  
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Date of mailing  
(day/month/year) **23 AUG 2004**

Applicant's or agent's file reference

**FOR FURTHER ACTION**

See paragraph 2 below

011525-384

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US04/00024

02 January 2004 (02.01.2004)

03 January 2003 (03.01.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): B65D 35/34 and US Cl.: 222/100,494,541.1

Applicant

H. J. HEINZ COMPANY

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

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**WRITTEN OPINION OF THE  
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**Box No. I Basis of this opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>2, 5, 6, 8-15, 18, 23, 24</u>	YES
	Claims <u>1, 3, 4, 7, 16, 17, 19-22, 25, 26</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-26</u>	NO
Industrial applicability (IA)	Claims <u>1-26</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 1, 3, 4, 7, 16, 17, 19-22, 25 and 26 lack novelty under PCT Article 33(2) as being anticipated by Odgen (US 3,917,118).

Claims 2 and 18 lack an inventive step under PCT Article 33(3) as being obvious over Odgen. Odgen discloses toothpaste, however, it is well known to dispense condiments from collapsible tubes.

Claims 5 and 23 lack an inventive step under PCT Article 33(3) as being obvious over Odgen in view of Lord (US 2,600,553). Odgen does not disclose tapered bottom walls while Lord teaches them. This would be an obvious modification to add the tapered walls of Lord to the dispenser of Odgen.

Claims 6 and 24 lack an inventive step under PCT Article 33(3) as being obvious over Odgen in view of Herron (US 6,126,219). Odgen does not disclose the nozzle in a vertical slot, while Herron teaches a nozzle in a vertical slot. It would have been obvious for one of ordinary skill in the art at the time the invention was made to use a vertical slot for the nozzle of Odgen, as taught by Herron, in order to dispense from the side of the container instead of the bottom.

Claims 8, 10 and 11 lack an inventive step under PCT Article 33(3) as being obvious over Odgen in view of Credle (US 2002/0190080). Odgen does not disclose the nozzle in the corner of the bag between two sealed edges while Credle teaches this in Figure 2 and 4. It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the nozzle of Odgen in the location taught by Credle as a matter of design choice.

Claims 12-15 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Johnson. Odgen as modified by Credle does not disclose a slitted nozzle with a peelable seal, while Johnson teaches this. It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the nozzle of Odgen/Credle with the features taught by Johnson in order to prevent unwanted discharge of the product.

Claim 9 lacks an inventive step under PCT Article 33(3) as being obvious over Odgen in view of Terazawa (US 2001/0017998). Odgen does not disclose the nozzle between two sealed side walls while Terazawa teaches this in Figure 1. It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the nozzle of Odgen in the location taught by Terazawa as a matter of design choice.

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**Box No. VIII Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 16, 17, 21 and 26 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims 16, 17, 21 and 26 are indefinite for the following reason(s): They recite that the ratchet is on the shaft and the pawl interacts with the ratchet to prevent rotation of the pawl in one direction but allow rotation in the other direction, while the pawl doesn't rotate, it is the ratchet that rotates in one direction and not the other..